Supreme Court, U.S.
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No. 99-1011

IN THE

Supreme Court of the United States

KNIGHT PUBLISHING COMPANY, d/b/a
THE CHARLOTTE OBSERVER,
and JOHN HECHINGER

Petitioners,

v.

PRESBYTERIAN HEALTH SERVICES CORP.

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of North Carolina

REPLY BRIEF FOR PETITIONERS

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In its Brief in Opposition, Respondent asserts that this Court lacks jurisdiction over this matter because the North Carolina Supreme Court decision below rests on independent and adequate state grounds.[1] However, in advancing this theory, Respondent gravely misconstrues the North Carolina Supreme Court's decision and mischaracterizes the essential core of the Petition before this Court.

In support of its argument, Respondent asserts that the North Carolina Supreme Court's opinion is founded solely upon resolution of an issue of state procedural law (the right of Petitioners to intervene and be heard on the issue of court closure) which it contends is entirely independent of a secondary federal question (the public's rights under the Due Process Clause and the First Amendment to attend civil court proceedings). This argument is without merit and wholly ignores the fact that the North Carolina Supreme Court's decision, even if superficially based upon a state procedural law, necessarily and unavoidably violates the substantive protections and requirements dictated by the Due Process Clause and First Amendment of the United States Constitution. Taken to its logical conclusion, Respondent's contentions would mean that state courts have the discretion to trump federal constitutional mandates by simply bypassing federal constitutional principles in favor of contrary state laws.

Respondent's argument also mischaracterizes and misconstrues the basic core of the Petition. The very heart of Petitioners' position is that the state procedure found by the North Carolina Supreme Court to prevent the public from being heard on the issue of closing a court proceeding violates the First Amendment and the Due Process Clause of the United States Constitution on multiple grounds. The Petition

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[1] Petitioners stand by all substantive arguments in their Petition for Certiorari and limit this Reply to Respondent's meritless jurisdictional argument.

maintains that the United States Constitution imposes a *federal* requirement that state trial courts, upon a motion to close civil court proceedings: (1) conduct a closure hearing at a timely juncture; (2) weigh, in a case-specific analysis, the factors that the Supreme Court has instructed must be considered before a closure can be mandated; and (3) make explicit findings on the record of its analysis and assessment of the facts, just as this court has held they must do in criminal cases. The North Carolina trial court did not do this and the Supreme Court of North Carolina has approved this conduct on the basis of state procedural grounds. Moreover, while it is true that the North Carolina Supreme Court's holding that the public has no right to be heard by a trial court in objection to the closure of judicial proceedings is based upon North Carolina procedural rules, one of the primary points of the Petition is that under the United States Constitution there *must* be such a right.

Concisely put, it is the Petitioners' position that the United States Constitution requires state courts to follow these procedures, and the fact that North Carolina did not do so creates a federal question, plain, pure and simple. Where a state judgment is based upon a state procedure that defeats federal constitutional rights, it cannot be said that such a state judgment rests on independent and adequate state grounds. The proposition central to the Petition for Writ of Certiorari is that *federal* principles arising under the United States Constitution circumscribe the procedures a state court tribunal may implement when a motion to close court proceedings or records is before it.

The Petitioners' position on these matters of federal constitutional law may be correct or they may be incorrect, it is for this court to say; however, these are entirely federal questions, not state ones. This is the core and basis upon which the Petition rests.

Consequently, the North Carolina Supreme Court decision is not and *cannot* be based upon independent state grounds and this Court has jurisdiction over this cause which it should exercise and grant the Petition.

Respectfully submitted,

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